

**GABUNGAN PERTUBUHAN TEKSI, KERETA SEWA, LIMOSIN
DAN TEKSI LAPANGAN TERBANG SEMALAYSIA-GTSM
v. GRABCAR SDN BHD**

HIGH COURT MALAYA, KUALA LUMPUR

AHMAD BACHE J

[WRIT NO: WA-22NCVC-801-12-2020]

27 OCTOBER 2021

Abstract – *The Malaysian Association of Taxi, Rental Car, Limousine and Airport Taxi (the Society), by alleging that GrabCar was running an illegal e-hailing services unauthorised by the relevant authorities and thereby, in competition with its members' right to livelihood was, in effect, seeking to enforce a public right. The claims were premised on alleged damages caused to each individual taxi drivers and rental car drivers, damages which were personal to them and not to the Society. The Society clearly lacked locus standi to prosecute the personal claims action; the action against GrabCar for alleged breaches of the Road Transport Act 2012, the Competition Act 2010, the Federal Constitution and the Contracts Act 1950 must therefore fail.*

UNINCORPORATED ASSOCIATIONS: *Societies – Suits – Locus standi – Suit by society for taxis, limousines and airport taxis against e-hailing service company ('GrabCar') – Whether allegation of damages personal to taxi and rental car drivers – Whether contractual claim evidenced by existence of contract between parties – Whether Society attempting to enforce 'public right' – Whether Society lacked locus standi to commence action for personal claims – Contracts Act 1950, s. 75 – Societies Act 1966, s. 7*

UNINCORPORATED ASSOCIATIONS: *Societies – Suits – Right of action – Suit by society for taxis, limousines and airport taxis against e-hailing service company ('GrabCar') – Whether private action or public action – Whether GrabCar provides online platform for third party independent e-hailing drivers and does not operate motor vehicles on road – Whether subjected to Road Transport Act 1987 ('RTA') – Whether breaches of alleged sections in RTA penal in nature – Whether Society's constitutional claim against GrabCar sustainable – Whether action for breach of Contracts Act 1950 failed for absence of contract between parties – Contracts Act 1950, ss. 24 & 66 – Societies Act 1966, s. 7*

The plaintiff was a registered umbrella society for taxis, limousines and airport taxis ('Society') whilst the defendant, GrabCar was involved in e-hailing service business. The plaintiff filed a suit against the defendant for, *inter alia*, breaches of contract, statutory duties and several laws *etc.* based on the allegation that GrabCar had allegedly run an illegal business not authorised by the relevant authorities and hence, in competition with their member's activities, causing damages to them. The defendant, in resisting the

- A Society's claim, *vide* encl. 7 posed the following questions of law under O. 14 and/or O. 33 r. 5 of the Rules of Court 2012 ('ROC'). The questions of law posed by the defendant were (i) whether the plaintiff, as a society registered under s. 7 of the Societies Act 1966, had the *locus standi* to claim for the purported losses and damages allegedly caused by GrabCar to taxi and rental car drivers; (ii) whether the alleged causes of action of the Society were time-barred under s. 6(1) of the Limitation Act 1953 ('LA') as the claim was filed on 4 December 2020, more than six years from 16 April 2014, the date the defendant was incorporated and allegedly ran its business illegally; (iii) whether the Road Transport Act 1987 ('RTA') grants a right of private action to the Society to sue GrabCar for alleged breaches of the RTA; (iv) whether, under s. 64 of the Competition Act 2010 ('Competition Act'), in the absence of a finding of infringement of any prohibition under Part II of the Competition Act by the Competition Commission, could the Society commence a private action against GrabCar for the alleged infringement of the Competition Act; (v) whether the provisions of the Federal Constitution ('FC') have 'horizontal effect' and were enforceable against private parties like GrabCar; (vi) whether the filing of a civil action against GrabCar for the Society's claims of public law could be commenced without leave for judicial review and impleading the relevant statutory authority; and (vii) whether in the absence of a contract between the Society and GrabCar, could the Society claim for alleged breaches of ss. 24 and 66 of the Contracts Act 1950 ('Contracts Act') and/or for compensation based on liquidated damages of RM100 million and/or for damages to be assessed under s. 75 of the Contracts Act against GrabCar.

Held (allowing defendant's application under O. 14A of ROC):

- F (1) The Society's claims were premised on the alleged damages caused to each individual taxi driver and rental car driver, damages which were personal to them and not to the Society. The Society had no *locus standi* to commence action for personal claims. The damages of RM100 million of LAD's claim was a contractual claim under s. 75 of the Contracts Act. There was no evidence of any contract between GrabCar and the Society in the first place and there was also no LAD clause between GrabCar and the Society. More importantly, the Society/plaintiff was attempting to enforce a 'public right' as the plaintiff was claiming against GrabCar for the alleged failure to comply with the RTA, the FC and the Competition Act. The Society's complaints were actually against the Ministry of Transport, Royal Malaysian Police, Road Transport Department and the Land Public Transport Commission. The Society did not obtain the consent of the Attorney General to commence the instant action. Therefore, question (i) ought to be answered in the negative. Further, the Society's alternative pleaded case that its action was a representative action under O. 15 r. 12 of the ROC was inconsistent with the Society's own pleadings and was therefore, misconceived. (paras 19, 20, 22-25 & 28)

- (2) The Society pleaded that it sustained damages from 16 April 2014, *ie*, the date the defendant was incorporated and allegedly ran its business illegally, and that was the earliest date on which the cause of action could have accrued. Therefore, the Society's action would have been time barred on 15 April 2020 and the claims of the Society under the RTA, the Competition Act, the FC and Contracts Act/breach of contract would be barred by limitation when this suit was filed on 4 December 2020. Hence, question (ii) ought to be answered in the affirmative. (paras 33, 35 & 36) A B
- (3) GrabCar did not operate motor vehicles on the road. Instead, it provided an online platform for third party independent e-hailing drivers to connect with passengers. Under the law, GrabCar's business is defined as 'intermediation business'. Hence, GrabCar or GrabCar's business are not subjected to the RTA but under the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987. It follows that the RTA did not create any obligation on the part of GrabCar with the Society, and that the GrabCar could not be sued for any purported breach of the RTA by the Society. The RTA was not intended for the benefit or protection of the Society as a particular class. Therefore, there should not be any special private right of action conferred upon the Society under the RTA. (paras 38, 40 & 42) C D E
- (4) As the alleged breaches of ss. 108, 109, 110, 110A, 119 and 119A of the RTA are penal in nature, the Society did not have any private right of action for alleged breaches pertaining to the RTA. Therefore, the Society's claim against GrabCar for the alleged breaches of ss. 108, 109, 110, 110A, 119 and 119A of the RTA was dismissed. (paras 46 & 47) F
- (5) Under the Competition Act, a finding of infringement is needed before s. 64 of the Competition Act could be relied upon by any party to commence a private action for breach of the Competition Act. There was no evidence of any findings made by the Competition Commission against GrabCar in relation to the claim of the Society. Without such a finding, the private action commenced by the Society in this suit was untenable and therefore, question (iv) was answered in the negative. (paras 48 & 50) G
- (6) The Society and GrabCar were private parties. This was not a claim by individuals against the public authority or the Government but between private parties. As such, the Society could not invoke the provisions of the FC in bringing a claim against GrabCar. Question (v) ought to be answered in the negative, in that, the FC does not have a horizontal effect to confer rights for individual to bring claims against another individual and that the Society's constitutional claims against GrabCar for breach of arts. 5, 6, 8 and 13 of the FC was dismissed. (paras 57 & 58) H I

- A (7) The Society's complaints were actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public Transport Commission. However, these parties were not impleaded. As the claim constituted claims of public law because those were decisions of the relevant public authorities, the correct mode should be by way of judicial review. The declarations sought were of a public law element and did not involve protecting the Society's private law rights. The action taken by the plaintiff was in disregard of O. 53 of the ROC, as the Society was attempting to challenge the actions of the public authorities by seeking declarations through this court. Hence, question (vi) was answered in the negative in that the Society could not commence such public law claims without applying for leave for judicial review and hence, the Society's claims were dismissed. (paras 59, 60 & 65-67)
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- C
- D (8) In any contractual claims involving ss. 24 and 66 of the Contracts Act, there must first be an agreement or contract between GrabCar and the Society in the first place for the provisions to apply. Here there was none. Therefore, question (vii) should be answered in the negative, in that, without a contract between the society and GrabCar in the first place, the claims for the purported breach of Contract Act collapsed. The Society's claims for the alleged breaches of s. 24 and 66 of the Contracts Act and/or for compensation based on liquidated damages of RM100 million and/or to be assessed under s. 75 of the Contracts Act against GrabCar was dismissed. (paras 68 & 74)
- E

Case(s) referred to:

- F *Airasia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 510 CA (*refd*)
Beatrice AT Fernandez v. Sistem Penerbangan Malaysia & Anor [2005] 2 CLJ 713 FC (*refd*)
Cubic Electronics Sdn Bhd (In Liquidation) v. Mars Telecommunications Sdn Bhd [2019] 2 CLJ 723 FC (*refd*)
Dato' Ahmad Johari Tun Abdul Razak v. A Santamil Selvi Alau Malay & Ors And Other Appeals [2020] 7 CLJ 588 CA (*refd*)
- G *Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor* [2007] 3 CLJ 377 CA (*refd*)
Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC (*refd*)
John Dadit v. Bong Meng Chiat & Ors [2015] 1 LNS 1465 HC (*refd*)
- H *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals* [2014] 7 CLJ 597 FC (*refd*)
KL Eco City Sdn Bhd v. Tuck Sin Engineering & Construction Sdn Bhd & Anor [2020] 1 LNS 360 HC (*refd*)
Lembaga Kumpulan Wang Simpanan Pekerja v. Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja [2000] 3 CLJ 81 FC (*refd*)
- I *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337 CA (*refd*)

Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd [2008] 2 CLJ 686 CA (*refd*) A
Selva Kumar Murugiah v. Thiagarajah Retnasamy [1995] 2 CLJ 374 FC (*refd*)
Tokio Marine Insurans (M) Bhd v. WCT Construction Sdn Bhd & Anor [2018] 4 CLJ 808 HC (*refd*)

Legislation referred to:

Competition Act 2010, ss. 6, 10, 23, 63, 64 B
Contracts Act 1950, ss. 24, 66, 75
Federal Constitution, arts. 5, 6, 8, 13
Limitation Act 1953, s. 6(1)
Road Transport Act 1987, ss. 108, 109, 110, 110A, 119, 119A
Rules of Court 2012, O. 6 r. 2(1)(b), O. 14A, O. 15 r. 12, O. 33 r. 5, O. 53 r. 3(6)
Societies Act 1966, s. 7 C

For the appellant's/plaintiff's - R Kengadharan; M/s R Kengadharan & Co
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M/s Rahmat Lim & Partners

Reported by S Barathi

JUDGMENT
(encl. 7)

Ahmad Bache J:

Introduction

[1] The plaintiff being a registered umbrella society for taxis, limousines, and airport taxis (Society) had filed a suit against the defendant for *inter alia* breach of contract, breach of statutory duties and breach of several laws etc. E

[2] The defendant, GrabCar, an e-hailing service business concern was incorporated on 16 April 2014. GrabCar resisted the plaintiff's claim on the ground that the Society has no *locus standi* to sue and that all the claims are time-barred. Further, there was no contract between them and that the plaintiff failed to get leave for judicial review as the claims involve public law/interest claim, amongst others. F

[3] Pursuant to the above, *vide* encl. (7), the defendant has posed seven questions of law to this court under O. 14A and/or O. 33 r. 5 of the Rules of Court 2012 for final determination that finally disposed of this matter. G

[4] After perusing the cause papers, referring to the relevant laws and considering submissions of parties, this court had answered all the seven questions in favour of the defendant and consequently, the plaintiff's claims stand dismissed with a nominal costs of RM1,000. H

[5] Dissatisfied, the plaintiff had filed a notice of appeal to the Court of Appeal.

[6] Herewith are the grounds for the decision. I

A The Salient Facts

[7] The Society/plaintiff had filed this claim essentially based on the allegation that the GrabCar (defendant) has allegedly run an illegal business not authorised by the relevant authorities and hence in competition with their members' activities, causing damages to them. Hence the plaintiff is claiming damages and various declarations for alleged statutory breaches from 16 April 2014, the time when the defendant was incorporated.

[8] However, the defendant has posed seven questions of law which this court had answered favourably for the defendant, disposing of the plaintiff's claims. Hence this appeal.

C The Questions Posed

[9] The seven questions posed by the defendant *vide* encl. (7) are as follows:

D (i) Question 1: Whether the plaintiff (Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin Dan Teksi Lapangan Terbang Semalaysia-GTSM ("the Society")), as a society registered under s. 7 of the Societies Act 1966, has the *locus standi* to claim for purported losses and damages allegedly caused by GrabCar to taxi and rental car drivers?

E If the answer to question 1 is in the negative, then the Society's writ and statement of claim be dismissed.

F (ii) Question 2: The Society is contending that GrabCar had breached the Road Transport Act 1987 ("RTA"), the Competition Act 2010, the Federal Constitution and Contracts Act 1950/breach of contract from 16 April 2014. Whether the alleged causes of action of the Society are time-barred under s. 6(1) of the Limitation Act 1953 as the claim was filed on 4 December 2020, more than six years from 16 April 2014?

If the answer to question 2 is in the affirmative, then the Society's claims in the writ and statement of claim be dismissed.

G (iii) Question 3: Whether the RTA grants a right of private action to the Society to sue GrabCar for alleged breaches of the RTA?

H If the answer to question 3 is in the negative, then the Society's claim against GrabCar for the alleged breaches of ss. 108, 109, 110, 110A, 119 and 119A of the RTA in paras. 9(i), 10, and 25(a)(i) of the statement of claim be dismissed.

I (iv) Question 4: Whether under s. 64 of the Competition Act 2010, in the absence of a finding of infringement of any prohibition under Part II of the Competition Act 2010 by the Competition Commission, could the Society commence a private action against GrabCar for the alleged infringement of the Competition Act 2010?

If the answer to question 4 is in the negative, then the Society's claim against GrabCar for breaches of ss. 6, 10, 23, 63 and 64 of the Competition Act 2010 in paras. 9(ii), 11, 25(a), (ii) of the statement of claim be dismissed.

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- (v) Question 5: Whether the provisions of the Federal Constitution have "horizontal effect" and are enforceable against private parties like GrabCar?

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If the answer to question 5 is in the negative, then the Society's claim against GrabCar for breaches of arts. 5, 6, 8 and 13 of the Federal Constitution in paras. 9(iii) and 25(a)(iii) of the statement of claim be dismissed.

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- (vi) Question 6: Whether the filing of a civil action against GrabCar for the Society's claims under paras. 12(c), (d), (e), 13 (iv) to (xvii), 14 and 15 of the statement of claim which are claims of public law could be commenced without leave for judicial review and impleading the relevant statutory authorities?

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If the answer to question 6 is in the negative, then the Society's claims under paras. 12(c), (d), (e), 13 (iv) to (xvii), 14 and 15 of the statement of claim be dismissed.

- (vii) Question 7: Whether in the absence of contract between the Society and GrabCar, could the Society claim for alleged breaches of ss. 24 and 66 of the Contracts Act 1950 and/or for liquidated damages of RM100 million and/or for damages to be assessed under s. 75 of the Contracts Act 1950 against GrabCar?

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If the answer to question 7 is in the negative, then the Society's claims for alleged breaches of ss. 24 and 66 of the Contracts Act 1950 and/or for compensation based on liquidated damages of RM100 million and/or to be assessed under s. 75 of the Contracts Act 1950 against GrabCar under paras. 15, 22, 23 and/or 25(b) and (c) of the statement of claim be dismissed.

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The Law On Order 14A Rules Of Court 2012

[10] Order 14A allows an early and expeditious disposal of any cause or matter based on a question of law or construction of any document arising in the cause or matter. It states as follows:

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Determination of questions of law or construction (O. 14A, r. 1)

1. (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:

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- A (a) such question is suitable for determination without the full trial of the action; and
- (b) such determination will finally determine the entire cause or matter or any claim or issue therein.
- B [11] It is trite that an issue is only suitable for determination under O. 14A in the following circumstances:
- C (i) the facts involved in the determination of the said issues must not be in dispute and would not require further adjudication (see *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337, and
- (ii) points of law have been stated in clear and precise terms; and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination (see *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686).
- D [12] Order 33 r. 5 of the Rules of Court 2012 reads as follows:
- Dismissal of action after decision of preliminary issue (O. 33 r.5)**
- E 5. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.
- F [13] It is trite that either party can make an application under this O. 14A of the Rules of Court 2012.
- Analysis And Finding Of This Court**
- G [14] After hearing submissions by parties and referring to the relevant laws/statutes and referring to the cause papers especially the pleadings and the affidavits and the intermediary licenses exhibited, this court held that essentially the disputes are only with regard to the legality of the GrabCar's (defendant's) actions, and not on facts, as alleged by the plaintiff.
- H [15] On the other hand, this court found that the plaintiff had merely averred that there are disputed facts without providing detailed particulars as how those facts are in dispute. In the case of *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals* [2014] 7 CLJ 597; [2014] 6 MLJ 31 at para. 24 the Federal Court said:
- I legally, in O. 14A and O. 33 r. 2 of the RHC applications no party has any liberty to disagree just for the sake of disagreeing to any fact pleaded which is obviously undisputed ...

Further down the Federal Court said:

an issue is only suitable for determination under O. 14A if the points of law to be determined thereunder have been stated in clear and precise terms and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination which would be final as to the entire cause or matter.

[16] Hence this court had decided that the questions posed in encl. (7) are questions of law, the determination of which will lead to the speedy disposal of the suit.

[17] This court will now endeavor to answer all the questions posed individually as follows:

(i) *Question 1: Whether The Plaintiff As A Society Registered Under S. 7 Of The Societies Act 1966, Has The Locus Standi To Claim For Purported Losses And Damages Allegedly Caused By GrabCar To Taxi And Rental Car Drivers?*

[18] In the Federal Court case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63, the court explained the concept of *locus standi* thus:

First, the plaintiff must possess an **interest in the issues** raised in the proceedings.

Second, where the private plaintiff relies on an interest in the enforcement of a **public right and not of a private right**, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally. (emphasis added)

[19] It is germane to note that the Society has commenced the action in its capacity as a society (para. 1 of the statement of claim). However, as can be seen from paras. 13, 21 of the statement of claim, the Society's claims are premised on the alleged damages caused to each individual taxi drivers and rental car drivers, damages which are personal to them and not to the Society. For example, at para 13 SOC, the plaintiff pleaded:

Plaintif selanjutnya menyatakan bahawa perbuatan dan tindakan Defendan:

- i) telah membawa dan menyebabkan kerugian kepada **setiap** pemandu teksi dan kereta sewa;
- ii) ... menyebab kehilangan ... dan pendapatan harian **pemandu teksi dan kereta sewa.** (emphasis added)

[20] This court ruled that in law, the Society which claimed to represent them has no *locus standi* to commence action for personal claims.

- A [21] In the Federal Court case of *Lembaga Kumpulan Wang Simpanan Pekerja v. Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja* [2000] 3 CLJ 81 referred by the plaintiff, the trade union of KWSP has filed an action for certain declaratory reliefs against KWSP. The reliefs sought were in relation to certain rights of the past and present union members
- B arising out of their individual contracts. The Federal Court held the claim ought to be struck out as the trade union had no *locus standi* to bring the action.
- [22] Further, this court observed that the damages of RM100 million of LAD's claim is a contractual claim under s. 75 Contracts Act 1950.
- C Unfortunately, there is no evidence of any contract between GrabCar and the Society in the first place, and that there is also no LAD clause between GrabCar and the Society (this will be discussed in detail later).
- [23] Most importantly, the Society/plaintiff is attempting to enforce a "public right" as the plaintiff is claiming against GrabCar for the alleged
- D failure to comply with the Road Transport Act, Federal Constitution, and the Competition Act (see paras. 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim). In fact, it can be gleaned from the statement of claim that the Society's complaints are actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public
- E Transport Commission. The Society did not obtain the consent of the Attorney General to commence the instant action as required by the law set out in the *Government of Malaysia v. Lim Kit Siang & Another Case (supra)*.
- [24] Therefore, question 1 ought to be answered in the negative in that the Society has no *locus standi* to bring this claim and the Society's writ and
- F statement of claim should be dismissed.
- [25] It is the Society's alternative pleaded case in para. 8(a)(i) of the plaintiff's affidavit in reply that the present action is properly constituted as a representative action under O. 15 r. 12 of the Rules of Court 2012.
- G [26] However, O. 6 r. 2(1)(b) of the Rules of Court 2012 states that prior to the issuance of a writ, the writ shall endorse the following if the plaintiff sues in a representative capacity:
- (b) where the plaintiff sues in a representative capacity, **with a statement of the capacity in which he sues;**
- H [27] Here the writ and intitulement in the present action clearly states that the Society is suing on behalf of "Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin Dan Teksi Lapangan Terbang Semalaysia-GTSM".
- I [28] The Society is actually suing on behalf of itself as seen in para. 1 of the statement of claim. Therefore, the assertion that the Society is commencing a representative action is inconsistent with the Society's own pleadings. The Society did not in its intitulement seeks to bring a representative action on behalf of the taxi and rental car drivers.

[29] It is trite that the plaintiff must be described as suing for itself and the specific class of people it represents. This is not how the Society was described in the intitulement in the writ and statement of claim. The assertion that its action is a representative action is misconceived. A

[30] Therefore, again this court ruled that question 1 ought to be answered in the negative and the Society's writ and statement of claim should be dismissed. B

(ii) Question 2: Whether The Alleged Causes Of Action Of The Society Are Time-barred Under Section 6(1) Of The Limitation Act 1953 As The Claim Was Filed On 4 December 2020, More Than Six Years From 16 April 2014? C

[31] The Society claimed that GrabCar has breached the Road Transport Act 1987, the Competition Act 2010, the Federal Constitution and Contracts Act 1950 which breach of contract was time barred.

[32] In the case of *Dato' Ahmad Johari Tun Abdul Razak v. A. Santamil Selvi Alau Malay & Ors And Other Appeals* [2020] 7 CLJ 588 referred by the defendant, the court held: D

[58] On that premise, we are of the view that the issue of a continuing tort does not arise. Neither is the continuing tort a new cause of action as found by Her Ladyship since the causes of action for both the first and second/present suits (filed on 23.6.2014 and 13.7.2017 respectively) are similar, identical or are one and the same; which is the tort of conspiracy to do intentional harm. That being so, s. 6 (1) (a) of the Limitation Act 1953 (Act 254) provides for the filing of a suit based on a cause of action on a tort to be done within six years from the date of the accrual of the cause of action, failing which, the suit will be barred by limitation. E

[59] As averted to earlier, the plaintiffs have expressly pleaded that the alleged acts complained of (the tort of conspiracy of intentional harm by unlawful means, uprooting the plaintiffs from Malaysia to a foreign land) occurred on or about 3 July 2008. Further, the plaintiffs are claiming for damages commencing from 4 July 2008. Thus based on their pleaded case, the cause of action on a tort of conspiracy of intentional harm arose on 3 July 2008 and s. 6 of the Limitation Act 1953 (Act 254) applies. F

[33] The Society had pleaded that it sustained damages from 16 April 2014 ie, the date the defendant was incorporated and allegedly runs its business illegally. The alleged statutory breaches in para. 25(a) of the statement of claim as prayed are from 16 April 2014. Hence, 16 April 2014 is the earliest date on which the cause of action could have accrued. H

[34] Since the Society has all the necessary facts and could have sued GrabCar on 16 April 2014, the Society's cause of action against GrabCar would have accrued on 16 April 2014. Accordingly, the claims would have been time-barred by 15 April 2020. I

A [35] Therefore, the Society's action would have been time-barred on 15 April 2020 and the claims of the Society under the RTA, the Competition Act 2010, the Federal Constitution and Contracts Act 1950/breach of contract would be barred by limitation when this suit was filed on 4 December 2020 (six months out of time).

B [36] As such, question 2 ought to be answered in the affirmative as the Society's claims are time-barred and this court hereby dismissed the writ and statement of claim.

(iii) Question 3: *Whether The Road Transport Act 1987 Grants A Right Of Private Action To The Society To Sue GrabCar For Alleged Breaches Of The Road Transport Act 1987 ("RTA 1987")?*

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[37] In essence, the Society alleged that GrabCar had breached ss. 108, 109, 110, 110A, 119 and 119A of the RTA in paras. 9(i), 10, and 25(a)(i) of the statement of claim. It would appear that the claim made by the Society is for a claim of the alleged breach of statutory duty. It is apparent that the RTA does not, in any way, confer upon the Society a private right of action against GrabCar as the purpose of the RTA is set out in its preamble:

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An Act to make provision for the regulation of motor vehicles and of traffic on roads and other matters with respect to roads and vehicles thereon; to make provision for the protection of third parties against risks arising out of the use of motor vehicles ...

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[38] This court agreed that GrabCar does not operate motor vehicles on the road. Instead, GrabCar provides an online platform only for third party independent e-hailing drivers to connect with passengers. Under the law, GrabCar's business is defined as "intermediation business".

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[39] Specifically, the provision of "intermediation business" e-hailing business was brought under the regulatory regime of the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 through the Land Public Transport (Amendment) Act 2017 and the Commercial Vehicle Licensing Board (Amendment) Act 2017 respectively.

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[40] Hence, GrabCar or GrabCar's business are not subjected to the RTA but under the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 instead. As such, it follows that the RTA does not create any obligation on the part of GrabCar with the Society, and that the GrabCar cannot be sued for any purported breach of the RTA by the Society.

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[41] Further, s. 110A of the RTA 1987 had been repealed by s. 37 of the Road Transport (Amendment) Act 2011 on 31 January 2011 through Federal Gazette PU(B) 37/2011. Hence, any question pertaining to GrabCar's alleged liability under s. 110A of the RTA 1987 ought to be dismissed, as it is not applicable to GrabCar. It is to be remembered that GrabCar was only incorporated in 2014 (three years after the repeal of s. 110A of the RTA in 2011).

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- [42] By reference to the purpose of the RTA as set out in its preamble, the RTA is intended for the regulation of motor vehicles and traffic on roads. It is evident that the RTA is not intended for the benefit or protection of the Society as a particular class. That being the case, there should not be any special private right of action conferred upon the Society under the RTA. A
- [43] In fact, the RTA has provided for its own penalties and enforcement mechanisms, whereby apart from the Road Transport Department officers, the police are given equal powers of investigation and enforcement. Hence, the intention of Parliament is not to confer private right action. B
- [44] It follows that when an Act allows an imposition of a criminal penalty for the said statutory duties, the general rule is that no private individual can bring an action to enforce the criminal law except the respective authorities or the Attorney-General. This was observed by the Federal Court in *Lim Kit Siang* at p. 83h: C
- With all due respect to the learned Judge, my view is clear in that fundamentally where a statute creates a criminal offence by prescribing a penalty for the breach of it but not providing a civil remedy – the general rule is that no private individual can bring an action to enforce the criminal law, either by way of an injunction or by a declaration or by damages. I am inclined to the view that it should be left to the Attorney-General to bring an action. D
- [45] In *KL Eco City Sdn Bhd v. Tuck Sin Engineering & Construction Sdn Bhd & Anor* [2020] 1 LNS 360; [2020] MLJU 435 referred by the defendant, the plaintiff claimed against the contractors for breach of statutory duties under the Uniform Building By-Laws, tort of negligence and contract. It was held that the breach of the by-laws would result in enforcement by the public authority, therefore will not give rise to a right of private action. Only the local authority can enforce that by-law (see also the case of *Tokio Marine Insurans (M) Bhd v. WCT Construction Sdn Bhd & Anor* [2018] 4 CLJ 808; [2018] 11 MLJ 83 (High Court)). E
- [46] As the alleged breaches of ss. 108, 109, 110, 110A, 119 and 119A of the RTA 1987 are penal in nature, the Society does not have any private right of action for alleged breaches pertaining to the RTA 1987. The power lies in the Attorney-General to bring criminal action against GrabCar if there were any breaches of the RTA 1987 and not for the Society to bring a private law action. F
- [47] Therefore, it is clear that the public authorities as permitted under the RTA 1987 are the only entities vested with the power to enforce any breaches of the RTA 1987. As such, this court ought to answer this question of law in the negative and dismiss the Society's claim against GrabCar for the alleged breaches of ss. 108, 109, 110, 110A, 119 and 119A of the RTA 1987. G
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- A *(iv) Question 4: Whether Under Section 64 Of The Competition Act 2010, In The Absence Of A Finding Of Infringement Of Any Prohibition Under Part II Of The Competition Act 2010 By The Competition Commission, Could The Society Commence A Private Action Against GrabCar For The Alleged Infringement Of The Competition Act 2010?*
- B [48] Under the Competition Act 2010, a finding of infringement is needed before s. 64 of the Competition Act 2010 can be relied upon by any party to commence a private action for breach of Competition Act 2010.
- C [49] Only then could the private right of action be brought after there is a prior decision/finding of infringement by the Malaysian Competition Commission (“Competition Commission”). This is because Parliament has clearly intended the Competition Commission to be the authority to supervise and regulate competition and not the courts. As such, there must be a finding by the Competition Commission that GrabCar is liable for the matters complained by the Society before any private right of action may be pursued under the Competition Act.
- D [50] In the present case, there is no evidence of any findings made by the Competition Commission against GrabCar in relation to the claim of the Society. Without such a finding, the private action commenced by the Society in this suit is untenable.
- E [51] Therefore, question 4 ought to be answered in the negative in that the Society cannot bring a private action in absence of a finding of infringement by the Competition Commission and the claim of the Society ought to be dismissed.
- F [52] Further, given that there are no such findings by the Competition Commission in respect of the complaints made by the Society, the Society’s claim against GrabCar for breaches of ss. 6, 10, 23, 63 and 64 of the Competition Act 2010 in paras. 9 (ii), 11, 25 (a) (ii) of the statement of claim are clearly baseless.
- G *(v) Question 5: Whether The Provisions Of The Federal Constitution Have “Horizontal Effect” And Are Enforceable Against Private Parties Like GrabCar?*
- [53] The Society has alleged that defendant/GrabCar has breached arts. 5, 6, 8 and 13 of the Federal Constitution.
- H [54] From the authorities, the Federal Constitution does not have a “horizontal effect” ie, it cannot be invoked by one private party against another. This trite principle is established in the Federal Court case of *Beatrice a/p Fernandez v. Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713 at para. 720d to 720f.

I

We took time to examine this allegation carefully and we found that it is simply not possible to expand the scope of art. 8 of the Federal Constitution to cover collective agreements such as the one in question. To invoke art. 8 of the Federal Constitution, the applicant must show that some law or action of the Executive discriminates against her so as to controvert her rights under the said article. Constitutional law, as a branch of public law, deals with the contravention of individual rights by the Legislature or the Executive or its agencies. Constitutional law does not extend its substantive or procedural provisions to infringements of an individual's legal right by another individual. Further, the reference to the "law" in art. 8 of the Federal Constitution does not include a collective agreement entered into between an employer and a trade union of workmen.

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[55] This principle was reaffirmed by the Court of Appeal in *Airasia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 510 at p. 519A, where Mohd Zawawi Salleh JCA (as His Lordship then was) observed that the Federal Constitution only has a "vertical effect" ie, it "only addresses the contravention of an individual's rights by a public authority".

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[56] See also the case of *John Dadit v. Bong Meng Chiat & Ors* [2015] 1 LNS 1465, where the plaintiff alleged that his privacy had been invaded by the defendant's publication of his photograph and story in breach of art. 5 of the Federal Constitution. The Federal Court held that the plaintiff cannot mount a constitutional claim against the defendants who are private individuals ie, it cannot cover infringements of an individual's legal right over another individual.

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[57] It is an accepted fact that the Society and GrabCar are private parties. This is not a claim by individuals against the public authority or the Government but between private parties (the Society and GrabCar). As such, the Society cannot invoke the provisions of the Federal Constitution in bringing a claim against the defendant/GrabCar. From the authorities above, there is no horizontal effect in the enforcement of constitutional claims.

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[58] Hence, question 5 ought to be answered in the negative in that the Constitution does not have a horizontal effect to confer rights for individual to bring claims against another individual and that the Society's constitutional claims against GrabCar for breach of arts. 5, 6, 8 and 13 of the Federal Constitution in paras. 9(iii) and 25(a)(iii) of the statement of claim be dismissed.

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(vi) Question 6: *Whether The Filing Of A Civil Action Against GrabCar For Society's Claims Under Paragraphs 12(c), (d), (e), 13(iv) To (xvii), 14 And 15 Of The Statement Of Claim Which Are Claims Of Public Law Could Be Commenced Without Leave For Judicial Review And Impleading The Relevant Statutory Authorities?*

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[59] It can be gleaned from paras. 12(c), (d), (e), 13 (iv) to (xvii), 14 and 15 of the statement of claim of the plaintiff, (especially paras. 12(c), (d), (e) and 13(iv) to (xvii)) that the Society's complaints are actually against the

- A Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public Transport Commission. However, these parties are not impleaded. The law is trite that if they wish to mount a public law action against these public authorities, it has to apply for leave to commence judicial review within three months from the date of the decision under O. 53 r. 3(6) of the Rules of Court 2012 which was already time-barred.
- B [60] As the claim constitutes claims of public law, because those were decisions of the relevant public authorities, the correct mode should be by way of judicial review. In the Court of Appeal's case of *Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor* [2007] 3 CLJ 377, the appellant sought to challenge the first respondent's decision to revoke his appointment as Deputy Prime Minister *via* an originating summons. The application was struck out by the High Court and affirmed by the Court of Appeal.
- C [61] In affirming that the claim is one of public law and the mode should be by judicial review, the Court of Appeal held:
- D [38] This suit raises public law issues as it is a decision and action taken by the Prime Minister in pursuance of the provisions of the Federal Constitution that is being impugned.
- E [62] It is crystal clear from the Society's pleadings that its claims are based on the actions of the relevant public authorities.
- [63] That the plaintiff's claim against the public authorities which involve public law can be seen at para. 13(ix) of the plaintiff's statement of claim and p. 41 of defendant's affidavit in support which reads:
- F ... bahawa Kementerian Pengangkutan Jalan tidak mengendalikan dan/atau mempedulikan hak dan kepentingan pemandu teksi dan kereta sewa sejagat.
- [64] Further at para. 15 statement of claim, (p. 43 of defendant's affidavit in support):
- G Plaintiff juga menyatakan bahawa Kerajaan Malaysia, Jabatan Pengangkutan Jalan, Lembaga Pengangkutan Awam dan Darat berserta Polis DiRaja Malaysia secara sengaja telah membenarkan Defendan beroperasi tanpa lesen dan tanpa pengiktirafan dari tahun 16hb Mei 2014 sehingga 27hb Julai 2017
- H [65] Hence it can be clearly seen that the declarations sought are of a public law element and does not involve protecting the Society's private law rights. Further, the Society had at para. 8(a)(iv) of the plaintiff's affidavit in reply admitted that the present action is a "public interest litigation".
- I [66] The question arises as to why the Society is attempting to challenge the decisions and actions of the public authorities without even impleading them when they are the decision-makers of the complained matters. This court agreed with the defendant that the action taken by the plaintiff is in

disregard of O. 53 of the Rules of Court 2012, as the Society is attempting to challenge the actions of the public authorities by seeking declarations through this court.

[67] Hence, question 6 ought to be answered in the negative in that the Society cannot commence such public law claims without applying for leave for judicial review. Consequently, this court dismissed the Society's claims under paras. 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim.

(vii) Question 7: Whether The Filing Of A Civil Action Against GrabCar For Society's Claims Under Paragraphs 12(c), (d), (e), 13(iv) to (xvii), 14 And 15 Of The Statement Of Claim Which Are Claims Of Public Law Could Be Commenced Without Leave For Judicial Review And Impleading The Relevant Statutory Authorities?

[68] It is trite that any contractual claims involving s. 24 and s. 66 of the Contracts Act 1950 (see para. 15 of the statement of claim), there must first be an agreement or contract between GrabCar and the Society in the first place for the provisions to apply. Here, there is none, and with respect is a non-starter.

[69] Regarding the Society's claims and prayers for liquidated damages amounting to RM100,000,000, this court agreed with the defendant that such claim is equally unfounded and can be dismissed based on the basic contract law principle and the wordings of s. 75 which reads:

Section 75 Compensation for breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. (emphasis added)

[70] The meaning of "liquidated damages" was explained in the Federal Court case of *Selva Kumar Murugiah v. Thiagarajah Retnasamy* [1995] 2 CLJ 374; [1995] 1 MLJ 817, where the court observed at p. 382 (CLJ); pp. 825E to 825F (MLJ) that:

It must be remembered that the expression 'liquidated damages' is the name for the contracting parties' supposedly genuine pre-estimate of the loss to the innocent contracting party when the contract is broken by the other.

A [71] This was also affirmed by the Federal Court again in *Cubic Electronics Sdn Bhd (In Liquidation) v. Mars Telecommunications Sdn Bhd* [2019] 2 CLJ 723; [2019] 6 MLJ 15.

B [72] From the above, it is clear from the wordings of s. 75 of the Contracts Act 1950 that there must be a contract or agreement and a sum named in the contract as the amount to be paid in case of such breach.

[73] The defendant/GrabCar has never entered into an agreement nor contract with the Society. Hence the above provisions are wholly inapplicable to the present suit, and is a non-starter.

C [74] As such, question 7 should be answered in the negative in that without a contract between the Society/plaintiff and GrabCar/defendant in the first place, the claims for the purported breach of Contracts Act 1950 collapsed. The Society's claims for the alleged breaches of ss. 24 and 66 of the Contracts Act 1950 and/or for compensation based on liquidated damages of RM100 million and/or to be assessed under s. 75 of the Contracts Act 1950 against
D GrabCar under paras. 15, 22, 23 and/or 25(b) and (c) of the statement of claim is hence dismissed.

Conclusion

E [75] For the foregoing reasons, whilst this court sympathises with the plaintiffs, this court found that there are no merits in the plaintiff's claims. The defendant's application under O. 14A of the Rules of Court 2012 is hence allowed with cost of RM1,000.

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